

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of Grace B. Rinehart, Deceased.

RONALD SCHIEBER, Personal Representative of
the ESTATE OF GRACE B. RINEHART,

UNPUBLISHED
March 1, 2005

Petitioner-Appellee,

v

LAMOYNE DORE,

No. 249342
Gladwin Probate Court
LC No. 03-012664-DA

Respondent-Appellant.

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right from two orders of the probate court which surcharged her share of the proceeds from the ultimate distribution of the decedent's estate. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Respondent advances various arguments that in effect challenge the probate court's legal authority to enter the orders being appealed. These arguments present questions of law that we review de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004).

First, despite acknowledging that the probate court did not find a violation of a temporary restraining order regarding use of the decedent's property, respondent devotes much of her argument to asserting that there was no basis for finding a violation of that order. Given that the orders at issue were not based on a finding of any violation of the temporary restraining order, respondent's claim that there was no such violation plainly does not provide a basis for relief.

Respondent argues that the probate court lacks "general equity powers" and, thus, had no jurisdiction to enter the orders at issue based on equitable considerations. We disagree. MCL 700.1302 provides in relevant part:

The court has exclusive legal and *equitable* jurisdiction of all of the following:

(a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

(i) The internal affairs of the estate.

(ii) Estate administration, settlement, and distribution.

(iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.

[Emphasis added.]

The statutory definition of “court” applicable to MCL 700.1302 defines the term as meaning “the probate court or, when applicable, the family division of circuit court.” MCL 700.1103(j). Thus, the probate court has general equitable jurisdiction under the plain language of MCL 700.1302(a) with regard to the present matter involving distribution of an estate and determining rights involving that estate.

In support of its position that the probate court lacks such equitable jurisdiction, respondent incorrectly refers to language in a footnote of the *dissent* in *In re Messer Trust*, 457 Mich 371, 390 n 2; 579 NW2d 73 (1998) (Weaver, J., dissenting), stating that probate courts have only those powers granted by statute. We are not bound by this statement of a dissenting justice, and note that in any event, pursuant to MCL 700.1302(a), the probate court had equitable jurisdiction with regard to the present matter.

Respondent also contends that the probate court improperly ordered a surcharge of her share of the estate in order to award attorney fees as an item of recovery to petitioner. Again, we disagree. We do not quarrel with respondent's assertion that as a *general* matter she is entitled to an “equal share” of the estate under MCL 700.2106(1). Nevertheless, the trial court made specific findings that the respondent was complicit in the creation of the trust at issue in this case at a time when the decedent lacked any testamentary capacity. The probate court referred to the trust as respondent's trust, and not that of the decedent. The probate court further concluded that as a matter of equity, the attorney fees sought by respondent could not be deemed to have been incurred in the ordinary course of administering the trust assets because there was no legitimate trust to administer. We find no error, since the probate court's ruling is consistent with case law holding that when a fiduciary contributed to, or was partly to blame for, bringing about unnecessary litigation that was of no benefit to the estate, the fiduciary rather than the estate should be responsible for the attorney fees incurred by the fiduciary. See *In re Valentino Estate*, 128 Mich App 87, 95-96; 339 NW2d 698 (1983), citing *In re Davis's Estate*, 312 Mich 258, 265-266; 20 NW2d 181 (1945); *In re Baldwin Estate*, 311 Mich 288, 314; 18 NW2d 827 (1945).

Finally, respondent argues in effect that her right to due process was violated because she did not receive notice that her share of the estate might be surcharged on any ground other than for alleged violation of the temporary restraining order. Due process notice requirements are “satisfied when interested parties are given notice through a method that is reasonably calculated under the circumstances to apprise them of proceedings that may directly and adversely affect

their legally protected interests and afford them an opportunity to respond.” *Wortelboer v Benzie Co*, 212 Mich App 208, 218; 537 NW2d 603 (1995) (citation omitted). Petitioner’s request to surcharge respondent’s share of the estate did not specifically limit the matter to consideration of whether the use of the decedent’s funds to defend the trust arrangement violated the temporary restraining order. The petition generally sought to recover funds belonging to the decedent that were paid in defense of the trust arrangement that “should not have been paid from such funds.” Under the circumstances, we believe that this was sufficient notice that petitioner was seeking to recover these funds based on general equitable principles. Respondent also asserts that she was never provided an opportunity to give testimony regarding the matter at issue. However, she points to no effort by herself to give testimony that was precluded by the trial court, and we have found no such attempt from our review of the record. Thus, we conclude that respondent has not shown any violation of her right to due process.

Affirmed.

/s/ Patrick M. Meter

/s/ Kurtis T. Wilder

/s/ Bill Schuette